Supreme Court, U.S.

05 - 725 DEC - 1 2005

OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Roger Liverman, Jr.,
Petitioner.

Vs.

United States Court of Appeals, Tenth Circuit
Respondent

PETITION FOR WRIT OF MANDAMUS

Roger Liverman, Jr.,
Pro Se Petitioner
1022 W Bullock Street
Denison, Texas 75020
(903) 465-3156 home
(903) 436-1563 cell

INTRODUCTION

Whether the Doctrine of the Rule of Law survives will depend on whether the Court exercises that "fundamental doctrine", on whether, the Court summons the will and the wisdom to do what is needed ----- and to grant this Petition and the right of an individual appearing Pro Se to speak his case in front of the United States Supreme Court for the world to see. Only then will the Doctrine of the Rule of Law will be restored along with the integrity of the Court.

The Courts appears so lost in uncertainty or paralyzed by politics that it is either unable or unwilling to act according to there Constitutional responsibility as a check and balance to the other two branches of government and more important the Defender of the Rule of Law.

The Republic of the United States of America has been described as a three legged stool the strength is based on a balance between each leg. If one leg becomes weak the whole stool becomes shaky or may fall. The founding father's envisioned and created a set of checks and balances delicately intertwined to prevent abuse and create a way to redress grievances, to protect citizens in a gentler manner, other than the historic means of resolving conflict by violence, civil unrest, revolution and war. Thus the Rule of Law Doctrine was established.

Those so famous words uttered not so long ago; "We hold these truths to be self evident that all men are created equal". Circumstances of life, makes and determines ones place in life and makes individuals either equal or not equal, rich-poor, bond-free,

Educated-Illiterate. But, only one place--- and the Founding Father's knew this. That only through the Doctrine of the Rule of Law would make all men equal. Only through the law can we be treated the same, it is a bedrock principle of our Constitution and way of life. The action of the Courts below and the Defendants has brought this into question. Are we a nation of the Rule of Law and not of Men?

This very issue of whether or not the "Rule of Law Doctrine" exists in the United States presents the Courts and the nation as a whole with a strategic challenge of global proportion, specifically in regards to U.S. Foreign Policy. Where the "Doctrine of the Rule of Law is being touted as a key in winning the war on global terrorism i.e. Afghanistan, Iraq, Iran, North Korea, Human Rights in China, Tibet and countless other countries in despair and where no law exists in any form.

Some critics may think this is irrelevant to the matter before the Court. I will show that this is a false assumption. The treatment of the Petitioner and the facts will show this has been a travesty of justice and should never have happened under our system of Government and especially of a nation that embraces the Doctrine of the Rule of Law. Ben Franklin was asked, "What hath though wrought? His reply: "A Republic if you can keep it."

If the Court does not Grant the Petitioner the right to argue his case before the Court. Then the Republic is dead and so is the Doctrine of the Rule of Law.

QUESTIONS PRESENTED

I. WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

II. DOES THE FEDERAL RULES OF CIVIL PROCEDURE, RULES OF APPELLATE PROCEDURE APPLY TO INDIVIDUALS APPEARING PRO SE OR ONLY TO ATTORNEYS?

III. HAS THE ACTIONS OF THE TENTH CIRCUIT:

1 VIOLATED THE PETITIONERS RIGHT OF AN IMPARTIAL TRIBUNAL;

2. RIGHT OF DUE PROCESS;

STATEMENTS OF INTERESTED PARTIES

There are no other known parties than those appearing on the cover of this Writ of Mandamus

TABLE OF CONTENTS

No.		Page
	Introduction	i
	Questions Presented	iii
	Statement of Interested Parties	iv
	Table of Contents	v
	Table of Citations	vi
	Statement of Jurisdiction	viii
	Issues to be Determined	1
	Argument	2
	Conclusion	6
	Appendix	

TABLE OF CITATIONS

Cases Cited:

Goldberg v Kelly, 397 U.S. 254,267-68 (1970)

Homeland Stores, Inc v. Resolution Trust Corp., 17 F.3d 1269, 1273 (10th Cir 1994).

Marshall v Jerrico, 446 U.S. 238, 242 (1980);

Mullane v Central Hanover.Trust Co. 339 U.S. 306 314(1950)

Murchinson, 349 U.S. 133 (1955).

National Resources Defense Council, Inc v United States, 822 F.2d 104 (D.C. Cir 1987

Schweiker v McClure, 456 U.S. 188,195 (1992).

Texas Western Financial Corp v Edwards, 797 F 2d 902,905 (10th Cir.1986)

Turmey v Ohio, 273 U.S. 510(1927);

United States v Corral, 823 F.2d 1389(10th Cir. 1987), cert denied, 486 U.S. 1054(1988).

United States v Johnson, 941 f.2d 1102, 1112 (10th Cir 1991);

United States v Monsanto, 49 U.S. 600, 607(1989).

United States v. Short, 947 F.2d 1445.1460(10th Cir. 1991), cert. denied, 112 S.Ct. 1680 (1992);

Statutes cited:

273. Act to Enforce the Fourteenth Amendment-April 20, 1871 (U.S. Statutes at Large, Vol XVII, p 13ff)

Federal Rules of Procedures

FRAP 27,10th Cir R. 27 Motions

Other Authorities Cited:

Fifth Amendment, U.S. Constitution

Fourteenth Amendment, U.S. Constitution

2A Sutherland, Statutes and Statutory Construction, §§46.05, .06(C. Sands rev. 4th ed. 1984).

Appendix

Appendix A - Notice of Substitution of Counsel

Appendix B - Objection to Granting Appellees Notice of Substitution of Counsel.

STATEMENT OF JURISDICTION

Congress, by a law passed at the very first session after the adoption of the constitution vol. 1, p.58, s.13,

having expressly given the Supreme Court the power of issuing writs of mandamus. The words are:

> "the Supreme Court shall also have appellate jurisdiction from the circuit courts, and courts of the several states, in the cases hereinafter specially provided for, and shall have power to issue writs of prohibition to the district courts when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States."

Again in Title 28 U.S.C. §1651. Writs. (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Under Title 28 U.S.C. § 1361. Action to compel an officer of the United States to perform his duty:

"The district courts shall have original jurisdiction of any action in the nature of mandamus to compel and officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

On June 13, 2005 the Counsel for George W Bush and Alberto Gonzales filed a Motion entitled Notice of

Substitution of Counsel. See Appendix A. The same day it was granted by the Clerk of the Tenth Circuit.

On June 21, 2005, Pro Se Plaintiff-Appellant filed a motion entitled Objection to Granting Appellees Notice of Substitution of Counsel. See Appendix B

To date no response. Roger Liverman Jr appearing Pro Se files this Petition of Writ of Mandamus to the United States Supreme Court.

ISSUES TO BE DETERMINED

I. WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

II. DOES THE FEDERAL RULES OF CIVIL PROCEDURE, RULES OF APPELLATE PROCEDURE APPLY TO INDIVIDUALS APPEARING PRO SE OR ONLY TO ATTORNEYS?

III. HAS THE ACTIONS OF THE TENTH CIRCUIT:

1 VIOLATED THE PETITIONERS RIGHT OF AN IMPARTIAL TRIBUNAL;

2. RIGHT OF DUE PROCESS;

At the outset of this brief, we need to distinguish between two important activities that are frequently mistaken for each other, persuasion and argument. "Persuasion" is primarily concerned with influencing the way people think or act whereas "argument" is concerned with discovering and conveying our best judgments about the truth of things through an appeal to reason.

The purpose of argument is simply ---to determine the "truth" of something

ARGUMENT

WHAT IS THE LEGAL DEFINITION OF THE WORD "SHALL"?

The Tenth Circuit defines "shall" in the following decisions:

"Shall" is not a permissive word; it is mandatory. United States v. Short, 947 F.2d 1445.1460(10th Cir. 1991), cert. denied, 112 S.Ct. 1680 (1992); United States v Johnson, 941 f.2d 1102, 1112 (10th Cir 1991); United States v Corral, 823 F.2d 1389(10th Cir. 1987), cert denied, 486 U.S. 1054(1988). When the word "shall" appears in a statute, "Congress could not have chosen stronger words to express its intent that [the specified action] be mandatory." United States v Monsanto, 49 U.S. 600, 607(1989).

There seems to be some inconsistency with the application and use of the word "shall" in both the district court and the Court of Appeals Tenth Circuit. When used by an Attorney the Court favors the definitions cited above, but when used by a person appearing Pro Se -- it means maybe, conditionally or just plainly ignored or depending on what party is involved by the Court as to the definition of the word "shall" if any.